THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos. 3740, 3750 & 15822 of 2005

06-10-2005

Between:

G.Srinivasa Rao & Others.

.....PETITIONERS

AND

Government of Andhra Pradesh, rep. by its Principal Secretary, Social Welfare Department & Others.

.....RESPONDENTS

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION Nos. 3740, 3750 & 15822 OF 2005

COMMON ORDER : (Per Hon'ble Sri Bilal Nazki, ACJ)

Heard learned counsel for the parties.

The grievance of the petitioners in these writ petitions is that they belong to a Scheduled Tribe community, 'Bentho Oriya'. There has been litigation earlier also and as a result of a judgment of a Division Bench of this Court, a Committee was appointed. According to the judgment dated 23.09.1996 in writ petition No.6459 of 1988 and batch, the question before the Court was,

> *"Whether 'Vaddi' community people residing in Srikakulam District and surrounding areas are 'Bentho Oriya' community, which is a Schedule Tribe caste or not."*

Admittedly, 'Bentho Oriya' community is a Scheduled Tribe, whereas, 'Vaddi' community is not a Scheduled Tribe and they belong to BC-A community in the State of Andhra Pradesh. The petitioners claim that they belong to 'Bentho Oriya' community, whereas the respondents claim that they belong to 'Vaddi' community. The Court, in writ petition No.6459 of 1988 and batch, ordered that the Committee should consider the question as to whether the people belonging to 'Vaddi' community are 'Bentho Oriya' community people or not.

We do not want to comment about the order passed by this Court, but it may be profitable to note that, perhaps, it is not possible for anybody or any authority to hold whether 'A' community is equivalent to 'B' community for the purposes of Article 366 of the Constitution. Once a community finds place in the Schedule issued by the President, it can only be altered by the Parliament. Therefore, the question of coming to a conclusion that one community is equivalent to another community, would, in our view, be without jurisdiction for any of the authorities. However, whether a person belongs to a community, which is a Scheduled community under Article 366, is a question of fact, which will have to be decided by the competent authority. In case of the writ petitioners, certificates have been issued by competent authorities that they belong to Scheduled

Tribe. But, there is a mechanism also provided in law under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes, and Backward Classes) Regulation of Issue of Community Certificates Act, 1993, providing for cancellation of certificates. Under this Act, the District Collector is an authority to cancel the certificates issued. A committee appointed by the Government, even on directions of the High Court, would not, in our view, be competent to declare whether the petitioners belong to 'Bentho Oriya' community or not. In our view, the reference itself was perhaps misplaced, as the reference made by the Court was whether 'Vaddi' community people were members of 'Bentho Oriya' community or not. Therefore, we hold that the declaration made by the committee that 'Vaddi' community people were not members of 'Bentho Oriya' community, was unnecessary. In case the respondents feel that the writ petitioners are not members of 'Bentho Oriya' community, which is a Scheduled Tribe community, they are free to approach the District Collector under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes, and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 and the Collector is free to pass appropriate orders after hearing the parties. He may not get influenced by the report of the committee appointed by the Government, but, he may take into consideration the evidence collected by the Government, after giving a chance to the petitioners to challenge such evidence. Till the matter is decided by the Collector, the certificates issued earlier in favour of petitioners, shall not be cancelled.

With these observations, the writ petitions are disposed of. No order as to costs.

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(BILAL NAZKI, ACJ)

6th October 2005.

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(R.SUBHASH REDDY, J)

ajr

N.B:

Office shall place the copies of this order in each bundle, after the signatures of their Lordships.